



135151

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

DEC 06 1990

5HS-12

REPLY TO ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mrs. Loraine L. Arendt
c/o Mr. Bertram A. Stone
Stone, Pogrud, Korey & Spagat
221 North LaSalle Street
32nd Floor
Chicago, Illinois 60601

Re: Order on Consent for the Chicago Modern Plating Company
Site, Chicago, Illinois

Dear Mrs. Arendt:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this site pursuant to Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq. As your Attorney was informed by Assistant Regional Counsel John Tielsch on November 23, the draft order you signed on November 5, 1990 differs from this fully executed order in three respects: all Respondents except Loraine L. Arendt have been removed from the Order; the contact for the Respondent, identified in paragraph 18, has been changed to Mr. Bertram A. Stone; and, the unnecessary signature block on page 13 has been eliminated by line-out. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact John Tielsch, Assistant Regional Counsel, at (312) 3553-7447 or Charles Gebien, On-Scene Coordinator, at (312) 353-7645.

Sincerely yours,

David A. Ullrich, Director
Waste Management Division

Enclosure

cc: William Child, Division of Land Pollution Control, IEPA
John Tielsch, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION

IN THE MATTER OF:

Chicago Modern Plating Co.
3029 North Rockwell
Chicago, Illinois 60618

Respondents:

Lorraine L. Arendt

) Docket No. **V-W- '91 -C- 078**

)
) ADMINISTRATIVE ORDER BY
) CONSENT PURSUANT TO
) SECTION 106 OF TO
) COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
) COMPENSATION, AND
) LIABILITY ACT OF 1980
) as amended, 42 U.S.C.
) Section 9606(a)
)
)
)

PREAMBLE

The United States Environmental Protection Agency (U.S. EPA) and the Respondent(s) have each agreed to the making and entry of this Order by Consent.

It is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C Section 9606(a), as amended by the Superfund Amendments and Reauthorizations Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

A copy of this Order will also be provided to the State of Illinois EPA, which has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondent(s) to undertake and complete emergency removal activities to abate conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at the site.

FINDINGS

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds:

1. The Chicago Modern Plating Co.(CMP) site is located at 3029 North Rockwell Street in Chicago, Illinois 60618.
2. The CMP site includes an approximately 21,000 square foot brick building and a fenced outdoor tank storage area in a mixed residential/commercial/industrial area. CMP operated from 1958 until April 19, 1990, when it ceased operations.
3. The CMP site contains nine plating and cleaning lines for brass, zinc, and nickel plating. In addition, the CMP site contains a polishing room, a chemical storeroom, a laboratory, a maintenance room, a racking area, a warehouse, a clarifier room, and a wastewater treatment system.
4. On June 27, 1990, U.S. EPA's On Scene-Coordinator (OSC) Charles Gebien and members of the Technical Assistance Team (TAT) conducted an assessment of the CMP site for emergency removal action.
5. The OSC and TAT members found that the plating lines contain cyanide bearing plating solutions, acids, caustic cleaners, and rinsewaters. The plating lines are uncovered.
6. The building houses approximately ten full or partially full aboveground tanks that contain zinc cyanide solutions, unidentified spent plating solutions, caustic cleaners, acids, wastewater, and sludge.
7. Approximately 80 55-gallon drums of sludge from the wastewater treatment system are stored in the building. Some of these drums are leaking onto the floor.
8. The laboratory within the building contains bottles of hazardous substances, including cyanides, acids, bases, and heavy metal compounds.
9. The wastewater clarifiers collect both wastewater from the plating lines and rainwater from the roof. The clarifiers must be emptied as needed to prevent overflow to the street.
10. The building's roof appears to have leaks in some areas and there are broken windows on the East side of the building.

DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. Chicago Modern Plating Co. (CMP) is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Each Respondent arranged for the storage, treatment, and/or disposal of hazardous substances at the CMP facility, or is a past or present owner or operator of the facility. Each Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607.
4. Zinc cyanide, brass cyanide, nickel cyanide, sulfuric acid, hydrochloric acid, chromic acid and the caustic cleaners within the CMP site are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. The U.S. EPA has determined that the deteriorated and leaking drums and uncovered tanks of the above hazardous substances constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
6. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.
7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment because of the following factors:

- a. actual or potential exposure to hazardous substances by nearby populations, animals, or food chain;

This factor is present at the Facility due to the existence of numerous open drums, tanks, and vats containing hazardous materials within the building. Although the building is equipped with an alarm system, there are broken windows which may allow undetected access by vandals. The mixture of compounds within the building may generate cyanide gas which could migrate to the surrounding residential neighborhood.

- b. hazardous substances in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

This factor is present at the Facility due to the existence of the leaking drums and open tanks of hazardous substances described above.

- c. weather conditions that may cause hazardous substances to migrate or be released;

This factor is present at the Facility due to the existence of the wastewater treatment clarifiers which could overflow to the street and into the building during rainstorms. The wastewater may react with open containers of acids and cyanides and/or cause additional deterioration of vessels within the building. Also, the roof appears to leak in some areas.

ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby ordered and agreed that Respondent(s) will undertake the following actions at the Facility:

1. Within twenty-one (21) calendar days after the effective date of this Order, the Respondent(s) shall submit to U.S. EPA for approval, a Work Plan for the removal activities ordered as set forth in Paragraph 4 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondent(s) shall implement the Work Plan as finally approved by U.S. EPA, including any modifications. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.
2. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent(s) can properly conduct the actions required by this Order.
3. Respondent(s) shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within 30 days of the effective date of this Order. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent(s). In the event U.S. EPA disapproves of a selected contractor, Respondent(s) shall retain a different contractor to perform the work, and such selection shall be made within two (2) business days following U.S. EPA's disapproval.

- 4(a) Within 7 calendar days after U.S. EPA approval of the Work Plan, Respondent(s) shall implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondent(s) to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall require the Respondent(s) to perform, and complete within twenty-one (21) calendar days after approval, at a minimum, the following removal activities:
- a. Implement the site Health and Safety Plan;
 - b. Maintain the 24 hour security service (alarm or other) and secure all access points into the site (broken windows);
 - c. Repackage all leaking drums of wastewater treatment sludge for disposal;
 - d. Dispose of the wastewater treatment sludge at a RCRA approved facility;
 - e. Sample and analyze the contents of all drums and tanks as needed to arrange for the sale of products (if applicable) and disposal of hazardous wastes;
- 4(b) The Work Plan shall require the respondent to perform, and complete within sixty (60) calendar days after approval, at a minimum, the following removal activities:
- a. Dispose of all hazardous wastes at a RCRA approved facility;
 - b. Remove all reusable products (hazardous substances) to outlets as approved by the OSC;
5. All materials removed from the CMP Facility shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.
6. On or before the effective date of this Order, the Respondent(s) shall designate a Project Coordinator. The U.S. EPA has designated Charles Gebien, of the Emergency and Enforcement Response Branch, Response Section 2, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondent(s) and the U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator.

During implementation of the Work Plan, the OSC and the Project Coordinator shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.

7. The U.S. EPA and the Respondent(s) shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondent(s), and Respondent(s) shall notify U.S. EPA, as early as possible before such a change is made. Notification may initially be verbal, but shall promptly be reduced to writing.
8. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent(s) at the facility.
9. No extensions to the time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.
10. All instructions by the U.S. EPA On-Scene Coordinator or designated alternate shall be binding upon the Respondent(s) as long as those instructions are not clearly inconsistent with the National Contingency Plan.
11. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondent(s), Respondent(s) shall attempt to obtain all necessary access agreements. In the event that after using their best efforts Respondent(s) are unable to obtain such agreements, Respondent(s) shall immediately notify U.S. EPA and U.S. EPA may then assist Respondent(s) in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as it deems appropriate. Respondent(s) shall reimburse U.S. EPA for all attorneys' fees and court costs it incurs in assisting Respondent(s) to obtain access.
12. Respondent(s) shall provide access to the Facility to U.S. EPA employees, and U.S. EPA-authorized contractors, agents, and consultants at anytime, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples, to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.
13. The provisions of this Order and the directions of the On-Scene Coordinator hereunder shall be binding on the employees, agents, contractors, successors, and assigns of the Respondent(s). Respondents are jointly and severally responsible for carrying out all actions required by this Consent Order.

14. This Order shall be effective on the date of signature by the Director, Waste Management Division.
15. Respondent(s) shall provide a written monthly progress report to the On-Scene Coordinator regarding the actions and activities undertaken under this Order. At a minimum, these progress reports shall describe the actions that have been taken to comply with this Order, including all results of sampling and tests received or prepared by the Respondent(s) and shall describe all significant work items planned for the next month.
16. Respondent(s) agree to retain for six years following completion of the activities required by this Order copies of all records, files and data relating to hazardous substances found on the site, or related to the activities undertaken pursuant to this Order, whether or not those documents were created pursuant to this Order. Respondent(s) shall acquire and retain copies of all documents relating to the site that are in the possession of their contractors, agents and employees. Respondent(s) shall notify U.S. EPA at least sixty (60) days before any documents retained under this paragraph are to be destroyed. The documents retained under this paragraph shall be made available to the U.S. EPA upon request.
17. Respondent(s) shall pay all past costs and oversight costs of the United States related to the CMP site which are not inconsistent with the National Contingency Plan. The United States Environmental Protection Agency shall submit an itemized cost statement entitled "Annotated SFUR Report" to Respondent(s) annually or, if sooner, not less than sixty (60) days after submission of the Final Report provided for in Paragraph 21 of this Order. Payments shall be made within sixty sixty (60) days of Respondents' receipt of the cost statement. Payments shall be made to the EPA Hazardous Substances Superfund delivered to the U.S. EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, in the form of a certified or cashier's check payable to "EPA Hazardous Substances Superfund." The face of the check should note that the payment is for the Chicago Modern Plating site, Superfund Site Identification Number TFA05F8JU. Respondents are jointly and severally liable for payment of the full amount due under this Order. A copy of the check(s) submitted must be sent simultaneously to the U.S. EPA representatives indicated in paragraph 18 below.
18. A notice, document, information, report, plan, approval, disapproval or other correspondence required to be submitted from one party to another under this Order shall be deemed submitted either when hand delivered or as of the date of receipt by certified mail, return receipt requested.

Submissions to the Respondents shall be submitted to:

Bertram A. Stone
Stone, Pogrud, Korey & Spagat
221 North La Salle St.
32nd Floor
Chicago, Illinois 60601

Submissions to the U.S. EPA shall be submitted to:

Charles Gebien
On-Scene Coordinator
U.S. EPA, Region 5
EERB-ERS 2
5HS-12
230 S. Dearborn
Chicago, Illinois 60604

19. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

PENALTIES FOR NONCOMPLIANCE

20. Subject to the provisions of this Consent Order, for each day the Respondent(s) fail(s) to meet the deadlines set forth in the Consent Order and workplan, Respondent(s) shall be liable as follows:
- a. For failure to commence and perform work described in this Consent Order and the U.S. EPA approved Work Plan: One Thousand Dollars (\$1,000) per day for one (1) to seven (7) business days of delay, and Two Thousand Dollars (\$2,000) per day for each day of delay, or part thereof, hereafter;
 - b. For failure to submit the Work Plan pursuant to Paragraph 1, at the time required under the terms of this Consent Order: One Thousand Dollars (\$1,000) per day for the first one (1) to seven (7) business days of delay, and Two Thousand Dollars (\$2,000) per day for each day of delay, or part thereof, thereafter;
 - c. For failure to submit the monthly written Progress Reports pursuant to Paragraph 15, or the Final Report pursuant to Paragraph 21, at the time required under the terms of this Consent Order: One Thousand Dollars (\$1,000) per day for the first one (1) to seven (7) business days of delay, and Two Thousand Dollars (\$2,000) per day for each day of delay, or part thereof, thereafter;

- d. For failure to comply with provisions of this Consent Order after notice by U.S. EPA of noncompliance: Two Thousand Dollars (\$2,000) per day for the first one (1) to seven (7) business days of delay, and Four Thousand Dollars (\$4,000) per day for delay, or part thereof, thereafter to a maximum of three times the total costs incurred for the response as completed by U.S. EPA.
21. All penalties which accrue pursuant to the requirements of this Order shall be paid within ten (10) calendar days of written demand by U.S. EPA. Payment shall be made to the EPA Hazardous Substances Superfund delivered to the U.S. EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, in the form of a certified or cashier's check payable to "EPA Hazardous Substances Superfund." The face of the check should note that the payment is for the Chicago Modern Plating site.
22. Pursuant to 31 U.S.C. Section 3717, interest shall accrue on any amount of overdue stipulated penalties at a rate established by the United States Treasury. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent(s) prevail(s) upon resolution, Respondent(s) shall pay only such penalties as the resolution requires.
23. Payment of Stipulated Penalties will not relieve Respondent(s) from complying with the terms of this Consent Order. U.S. EPA retains the right to seek any remedies or sanctions available to U.S. EPA by reason of Respondent's noncompliance with the provisions of this Consent Order that are not otherwise expressly limited by these Stipulated Penalty provisions.

TERMINATION AND SATISFACTION

24. The Respondent(s) shall submit a final report summarizing the actions taken to comply with this Order. The report shall contain, at a minimum: identification of the facility, a description of the locations and types of hazardous substances encountered at the facility upon the initiation of work performed under this Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical

results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who supervised or directed the preparation of that report. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within thirty (30) days of completion of the work required by the U.S. EPA.

25. The provisions of this Order shall be deemed satisfied upon payment by Respondent(s) of all sums due under the terms of this Order and upon the Respondent's receipt of written notice from U.S. EPA that the Respondent(s) has (have) demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks consistent with this Consent Order which U.S. EPA has determined to be necessary, have been completed.

INDEMNIFICATION

26. The Respondent(s) agree to indemnify and save and hold harmless the United States Government, its agencies, department, agents, and employees, from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondent(s), its officers, employees, receivers, trustees, agents, successors or assigns, in carrying out the activities pursuant to this Order. The United States Government shall not be held as a party to any contract entered into by the Respondent(s) in carrying out activities under this Order.

RESERVATION OF RIGHTS

27. This Order is not intended for the benefit of any third party and may not be enforced by any third party.
28. The U.S. EPA and the Respondent(s) reserve all rights, claims, demands, and defenses, including defenses and denials of and to all determinations and findings, that they may have as to each other except as otherwise provided in this Order pursuant to any available legal authority. Nothing in this Order, however, shall expand the Respondents' Respondents' ability to obtain preenforcement review of U.S. EPA actions. Notwithstanding any reservation of rights, Respondent(s) agree(s) to comply with the terms and conditions of this Order and consent(s) to the jurisdiction of the U.S. EPA to enter into and enforce this Order.

29. Nothing herein is intended to release, discharge, limit or in any way affect any claim, causes of action or demands in law or equity which the parties may have against any persons, firm, trust, joint venture, partnership, corporation, or other entity not a party to this Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, disposal, release or threat of release of any hazardous substance, hazardous waste, contaminant or pollutant at or from the site. The parties to this Order hereby expressly reserve all rights, claims, demands and causes of action they may have against any and all other persons and entities who are not parties to this Order.
30. Nothing herein shall be construed: 1) to prevent U.S. EPA from exercising its right to disapprove of work performed by the Respondent(s); 2) to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this order; 3) to prevent U.S. EPA from taking other legal or equitable action not inconsistent with the Covenant Not To Sue in paragraphs 38 through 40 of this Order; 4) to prevent U.S. EPA from requiring the Respondent(s) in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law; or 5) to prevent U.S. EPA from undertaking response actions at the site.

FORCE MAJEURE

31. The Respondent(s) shall cause all work to be performed within the time limits set forth herein and in the approved Work Plan, unless performance is delayed by "force majeure". For purposes of this Order, "force majeure" shall mean an event arising from causes entirely beyond the control of the Respondent(s) and their contractors which delays or prevents the performance of any obligation required by this Order. Increases in costs, financial difficulty, normal inclement weather, and delays encountered by the Respondent(s) in securing any required permits or approvals are examples of events that are not considered to be beyond the control of the Respondent(s).
32. Respondent(s) shall notify the OSC within 24 hours after Respondent(s) become aware of any event which Respondent(s) contend constitutes a force majeure, with subsequent written notice within seven (7) calendar days of the event. Such written notice shall describe: 1) the nature of the delay, 2) the cause of the delay, 3) the expected duration of the delay, including any demobilization and remobilization resulting from the delay, 4) the actions which will be taken to prevent or mitigate further delay, and 5) the timetable by which the actions to mitigate the delay will be taken. Respondent(s) shall implement all reasonable measures to avoid and/or minimize such delays. Failure to

comply with the notice provision of this paragraph shall be grounds for U.S. EPA to deny Respondent(s) an extension of time for performance. The Respondent(s) shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay. If U.S. EPA determines a delay is or was attributable to a force majeure, the time period for performance under this Order shall be extended as deemed necessary by the OSC to allow performance.

DISPUTE RESOLUTION

33. The Parties to this Order on Consent shall attempt to resolve expeditiously and informally and disagreements concerning implementation of this Order on Consent or any Work required hereunder.
34. In the event that any dispute arising under this Order on Consent is not resolved expeditiously through informal means, any party desiring dispute resolution under this Section shall give prompt written notice to the other parties to the Order.
35. Within ten (10) days of the service of notice of dispute pursuant to Paragraph 30 above, the party who gave notice shall serve on the other parties to this Order a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). The opposing parties shall serve their Statement of Position, including supporting documentation, no later than ten (10) days after receipt of the complaining party's statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work, they shall be shortened upon and in accordance with notice by U.S. EPA.
36. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statements of Position served pursuant to the preceding paragraphs.
37. Upon review of the administrative record, the Director of the Waste Management Division, U.S. EPA, Region V, shall resolve the dispute consistent with the NCP and the terms of this Order.

NON-ADMISSION

38. The consent of the Respondent(s) to the terms of this Order shall not constitute or be construed as an admission of liability or of U.S. EPA's findings or determinations contained in this Order in any proceeding other than a proceeding to enforce the terms of this Order.

CERCLA FUNDING

39. The Respondent(s) waive any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA against the United States or the Hazardous Substance Response Trust Fund established by Section 221 of CERCLA for, or arising out of, any activity performed or expenses incurred pursuant to this Consent Order.
40. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

COVENANT NOT TO SUE

41. Upon termination and satisfaction of this Administrative Order pursuant to its terms, for and in consideration of the complete and timely performance by Respondent(s) of the obligations agreed to in this Order, U.S. EPA hereby covenants not to sue Respondent(s) for judicial imposition of damages or civil penalties for any failure to perform obligations agreed to in this Order except as otherwise reserved herein.
42. Performance of the terms of this Order resolves and satisfies the liability of the Respondent(s) to U.S. EPA for matters addressed herein. U.S. EPA recognizes that, pursuant to Section 113 of CERCLA, the Respondent(s), upon having resolved their liability with the U.S. EPA for the matters expressly covered by this Order, shall not be liable for claims for contribution regarding matters addressed in this Order. Nothing in this Order precludes the Respondent(s) from asserting any claims, causes of action or demands against potentially responsible parties (PRPs) who are not parties to this Order for indemnification, contribution, or cost recovery.
43. In consideration of the actions to be performed by the Respondent(s) under this Order, the U.S. EPA covenants not to sue the Respondent(s), its (their) successors or assigns for any and all claims which are available to the U.S. as against the Respondent(s) under Sections 106 and 107 of CERCLA concerning all matters satisfactorily performed.

SUBSEQUENT AMENDMENT

44. This Consent Order may be amended by mutual agreement of U.S. EPA and the Respondent(s). Any amendment of this Consent Order shall be in writing, signed by U.S. EPA and the Respondent(s) and shall have as the effective date, that date on which such amendment is signed by U.S. EPA.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 5th day of NOVEMBER, 1990.

✓ By Lorraine L. Arendt
For: Loraine L. Arendt

~~Agreed this _____ day of _____, 1990.~~

~~By _____~~

~~For: Estate of Chicago Modern Plating Co., Inc.~~

The above being agreed and consented to, it is so ORDERED
this 6th day of December, 1990.

By David A. Ullrich
David A. Ullrich, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V, Complainant